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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 JAMES MOODY,

11 Petitioner,

12 v.

13 SCOTT FRAKES,

14 Respondent.

Case No. C09-5204RJB-KLS

ORDER DENYING  
PETITIONER'S MOTION FOR  
APPOINTMENT OF COUNSEL

15 Petitioner has filed petition for writ of *habeas corpus* pursuant to 28 U.S.C. § 2254. (Dkt. #2). He  
16 currently is being represented in this matter through *pro bono* counsel. This matter is before the Court on  
17 petitioner's filing of a motion for appointment of his *pro bono* counsel at public expense. (Dkt. #14). The  
18 Court, having reviewed petitioner's motion, hereby finds and ORDERS as follows:

19 There is no right to have counsel appointed in cases brought under 28 U.S.C. § 2254, unless an  
20 evidentiary hearing is required or such appointment is "necessary for the effective utilization of discovery  
21 procedures." See McCleskey v. Zant, 499 U.S. 467, 495 (1991); United States v. Duarte-Higareda, 68  
22 F.3d 369, 370 (9th Cir. 1995); United States v. Angelone, 894 F.2d 1129, 1130 (9th Cir. 1990); Weygandt  
23 v. Look, 718 F.2d 952, 954 (9th Cir. 1983); Rules Governing Section 2254 Cases in the United States  
24 District Courts 6(a) and 8(c). The Court also may appoint counsel "at any stage of the case if the interests  
25 of justice so require." Weygandt, 718 F.2d at 754. In deciding whether to appoint counsel, however, the  
26 Court "must evaluate the likelihood of success on the merits as well as the ability of the petitioner to  
27 articulate his claims *pro se* in light of the complexity of the legal issues involved." Id.

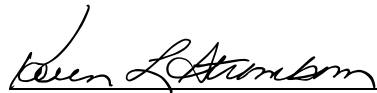
28 Petitioner has not requested that he be allowed to conduct discovery in this matter, nor does the

1 Court find good cause for granting leave to do so. See Rule Governing Section 2254 Cases in the United  
2 States District Courts 6(a). The Court also has determined that an evidentiary hearing is not necessary in  
3 this case. See Rule Governing Section 2254 Cases in the United States District Courts 8(c); Report and  
4 Recommendation, dated the same date herewith). Further, in light of the Report and Recommendation,  
5 dated the same date herewith, recommending that his *habeas corpus* petition be dismissed on its merits,  
6 petitioner has not shown the required likelihood of success.

7 The legal issues in this matter also are not so complex, again in light of the discussion thereof  
8 contained in the Report and Recommendation, so as to require appointment of counsel at government  
9 expense. Lastly, petitioner has not shown that his particular conditions of confinement are such that “the  
10 interests of justice” require appointment of counsel at government expense. Accordingly, petitioner’s  
11 motion for appointment of counsel (Dkt. #14) hereby is DENIED.

12 The clerk shall send a copy of this Order to petitioner and to counsel for respondent.

13 DATED this 2nd day of October, 2009.

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17 Karen L. Strombom  
18 United States Magistrate Judge  
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